

## 7/02 Exam - MPT - Sample Answer #1

### I. Introduction

1. I am Al Merton, a resident of Griffin County, Franklin. This is my last will and testament.
2. I hereby revoke any and all wills and/or codicils previously made by me.
3. I have no spouse, but have two adopted children, Sara Merton and Stuart Merton. I also have two nephews, Daniel Merton and Louis Merton, also children of my deceased brother David Merton, that I have not adopted.

### II. Dispositive Clauses

#### 1. Specific Bequests

- 1 (a). I bequeath the Lincoln Street property, i.e., the land, to Merton Office Supply Corporation.
- 1 (b). I bequeath the building on the Lincoln Street property to Merton Office Supply Corporation.
- 1 (c). I bequeath an equal share of the business, Merton Office Supply Corporation, subject to a voting trust attached hereto, the conditions of which are stated in the paragraph below, to Sara, my adopted child, Louis and Daniel, children of my deceased brother, David, but sharing the profits.
- 1 (d). In order to receive their share of the business, Merton Office Supply Corporation, Sara Merton, Louis Merton and Daniel Merton must do the following:
  - A. They must agree to vote for an amendment of the corporation's articles of incorporation to validate the 15 year voting trust described below.
  - B. They must all sign a 15 year voting trust giving Sara control of the corporation, but will share in the profits (if any) of the corporation.
  - C. If either Louis or Daniel do not sign this voting trust and amend the articles of incorporation, a condition precedent to their taking of the share in the business will not have been met and all shares will go to Sara Merton.

#### 2. General Bequests

1. I bequeath \$100,000 each to Sara Merton, Louis Merton, and Daniel Merton.
2. I bequeath \$1,000,000 to Franklin College in a endowment for the small business program to be named The Henry Merton Small Business Assistance Program.

#### 3. Demonstrative Bequests

1. I further bequeath \$25,000 to Sara Merton to be paid out of any monies remaining in my savings account.

#### 4. Residuary Bequests

I bequeath any remaining assets to Franklin College Faculty Development

Fund.

Memo: To: C. Locker

With regard to Stuart Merton, he does not appear in the instrument in any way as Mr. Merton specifically indicates that he is to be disinherited, as per the transcript of your conversation with Mr. Merton.

With regard to the gifts of the corporate stock, there are 2 controlling cases. *Tourneau* [citation] holds that donees will take a gift subject to any condition imposed or not @ all, assuming such conditions comply with any relevant statutory requirements and as long as there is an express gift to another person if the condition is breached.

*Barry v. Allen* [citation] holds that the relevant statute requires a 10 year maximum on the term of a voting trust, unless the articles of incorporation allow longer terms for such trusts. If the articles of incorporation are silent on the issue or do impose a limit other than that desired by the testator, the testator may require the donees to amend the articles of incorporation accordingly.

Thus, I have drafted the will to include a voting trust (the document itself is incorporated by reference) and a clause that requires the donees to amend the articles of incorporation. There is an express gift to Sara Merton should this condition not be met. These clauses should be in compliance with the relevant statutory requirements and applicable case law.

Please let me know if I can be of further assistance.

s/law clerk

## 7/02 Exam - MPT - Sample Answer #2

### Last Will and Testament Al Merton

#### Part I: Introduction

I, Al Merton, a resident of Griffon County, Franklin, do make, publish and declare this my last will and testament. I revoke all wills and codicils previously made by me. I never married and have two adopted children Sara Merton and Stuart Merton, the children of my deceased brother, David and his deceased wife Lydia, and two nephews, Daniel Merton and Louis Merton, also sons of David and Lydia.

#### Part II: Dispositive Clauses

##### 1. Specific Bequests

###### A. Real Property

I bequeath my real property known as the "Lincoln Street Property" to the Merton Office Supply Corporation.

###### B. Tangible Personal Property

I bequeath my 150 shares in the Merton Office Supply Corporation in equal parts (50 shares each) to my adopted daughter Sara and my two nephews, Daniel and Louis.

###### C. Other specific bequests

###### D. Clauses for conditions for the Disposition of Specific Bequests

(1) My adopted son, Stuart Merton, shall not receive any bequest from this will, it is my intent that he be disinherited.

(2) With respect to my interest in the corporation known as Merton Office Supply Corporation, and as a condition precedent to my turning over my stock interests in such business to my adopted daughter Sara and my two nephews, Daniel and Louis, I direct that they must agree to vote for an amendment of the articles of incorporation to validate a 15 year voting trust and that such beneficiaries must then enter into a 15 year voting trust agreement in favor of my adopted daughter, Sara. If any party shall fail to vote for the amendment to the articles of incorporation, that party will be divested of their share, with a gift of that share to Sara. The voting trust agreement shall give Sara the full voting rights for a minimum of 15 years with respect to the stock interests of all the beneficiaries. The profits of the trust to be shared by all 3 if they so agree to the conditions for the trust. The trust agreement shall further provide that if Sara dies prior to the expiration of the trust agreement, the voting trust shall cease and the stock certificates shall be delivered to the beneficiaries thereof.

##### 2. General Bequests

A. I bequest to my adopted daughter, Sara, and my nephews Louis and Daniel 100,000 dollars each.

B. I bequest to Franklin College 1 million dollars for the small business program to be named for my dad "The Henry Merton Small Business Assistance Program."

3. Demonstrative Bequests

I bequest to my adopted daughter Sara 25,000 dollars payable from my savings account.

4. Residuary Bequests

I bequest any remaining property and assets to the Franklin College Faculty Development Fund.

Part III: Definitional Clauses

To be filled in later by another associate.

Part IV: Boiler plate clauses

To be filled in later by another associate.

Date \_\_\_\_\_

Signed \_\_\_\_\_

Al Merton

Witnesses \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Question (2)

Several issues were taken into account when drafting the conditions relating to the gift of the corporate stock. First, Al stated that it would take 15 years to get the company going. Second, Al wanted Sara to have control in running the company. Third, because this is a family business, Al did not want to completely cut off his nephews (other than Stuart, his adopted son/nephew) from enjoying the fruits of the family business. Fourth, the case law of Franklin was indicative that the condition for a trust voting agreement be set up this manner in light of Franklin statute §102(b). Under that statute if the trust agreement goes beyond 10 years it is void w/o the articles of incorporation authorizing the longer term. The case of Bary v. Allen (Franklin Supreme Court) suggests that “there are few limits on the conditions a testator can place on bequests in a will. And the case of In Re Estate of Henry K. Tourneau (Franklin Ct. App.), states that conditions precedent (or subsequent) on the gift of stock is allowable and that “the testator has such a right is unquestioned.” Fifth, so considering the limits imposed by the statute, §102(b), and Al’s intention for Sara to have 15 years to get a hold of the company and that she have voting power, the most appropriate decision in light of the case law was to make the amendment of the articles of incorporation and the voting trust agreement w/power to Sara, a condition precedent on the gift. If either nephew does not want to follow such condition, power will still rest w/Sara as per Al’s request. Sixth, the Bary case also suggests that Al could recapitalize the corporation and transfer only voting stock to Sara, but this would require action outside the will, but is a possibility perhaps for Al to consider; although it may not reach the result of allowing equal shares to Daniel and Louis. Lastly, the section on if Sara should die b/u the voting trust shall cease was added to reflect Al’s wishes that Louis and Daniel still have

shares and that if it were not for Sara wanting to run the business, he would sell it now; thus probably making it okay in the future if Sara is not around, for the two nephews to sell it if they later so choose.

### 7/02 Exam - MPT - Sample Answer #3

#### Last Will and Testament Al Merton

##### Part One: Introduction

1. I am Al Merton, a domiciliary of Griffin County, Franklin. This is my last will and testament.
2. I revoke all wills and codicils previously made by me.
3. I have two children, Sara and Stuart Merton, who I have adopted; and two nephews, Daniel and Louis Merton.

##### Part Two: Dispositive Clauses

1. Specific Bequests
  - a. Real Property  
I bequeath the Lincoln Street property, consisting of the land and building used in the operation of Merton Office Supply, to Merton Office Supply Corporation.
  - b. Other Specific Bequests  
I bequeath all issued and outstanding stock of the Merton Office Supply Corporation to Sara Merton, Louis Merton, and Daniel Merton in equal shares, on the following conditions:
    - (1) Sara Merton, Louis Merton, and Daniel Merton agree to vote for an amendment of the Articles of Incorporation of the Merton Office Supply Company, authorizing the creation of a fifteen (15) year voting trust;
    - (2) Sara Merton, Louis Merton, and Daniel Merton transfer their voting rights to a trustee under a voting trust;
    - (3) The voting trust is in writing, deposited with the Merton Office Supply Company at its registered office, and subject to inspection by both stockholders and holders of the beneficial interests in the trust; and
    - (4) The voting trust grants to Sara Merton the full voting rights to the Merton Office Supply Company stock for at least fifteen (15) years. The shares of any devisee under this provision who do not agree and complete the preceding conditions will automatically transfer to Sara Merton.
2. General Bequests  
I bequeath the sum of one hundred thousand dollars (\$100,000) to Daniel Merton.  
I bequeath the sum of one hundred thousand dollars (\$100,000) to Louis Merton.  
I bequeath the sum of one hundred twenty five thousand dollars (\$125,000) to Sara Merton.
3. Demonstrative Bequests  
  
I bequeath one million dollars (\$1,000,000) to Franklin College, to be paid out of my

assets consisting of my stock portfolio, provided that Franklin College use the bequest to endow the small business program; and further provided that the program be named the “Henry Merton Small Business Assistance Program.”

#### 4. Residuary Bequests

I bequeath all other property owned by me at death to Franklin College.

Date: \_\_\_\_\_

## Al Merton

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Explanation of Will provisions:

## Part One: Introduction

1. This provision contains the testator's name and domicile as per our firm's format for drafting wills.

2. This provision expressly revokes all prior wills created by the testator.

3. Sara and Stuart Merton are listed as children in the family clause because Al adopted them, thereby severing their ties to their biological parents, and becoming lineal descendants of Al, pursuant to §101(e) of the Franklin Probate Code.

## Part Two: Dispositive Clauses

1. The Specific Bequests of land

a. Real Property

To ensure that the building and land on which the office supply corporation are located remain a part of the corporation, they were devised to the corporation itself, ending its leasehold and creating a fee simple estate for the corporation.

b. Other Specific Bequests

The bequest of stock sets out the conditions required for the gift. The three devisees must vote to amend the Articles of Incorporation because the Articles are silent on the issue of a voting trust. In Barry v. Allen, the Franklin Supreme Court required that a voting trust, to be valid must satisfy strictly the requirements of §102(b) of the Corporations Code. This means that the Articles must contain authorization for a voting trust and must extend the term of the trust to 15 years to ensure Sara can keep control to make the business successful. Under In re Estate of Henry K. Tournau, conditions subsequent and conditions precedent are okay to enforce the voting trust as long as there was an express gift to another if the conditions were breached. I drafted the conditions as conditions subsequent and made an express gift of all the stock of the breaching devisee to Sara to satisfy this requirement.

## 2. General Bequests

The general devises of money are to be paid out of general estate assets. I gave Sara the lump sum of what Al wanted her to have.

The gift to Franklin College is paid out of specific assets.

Any remaining estate property will pass to Franklin College.

I did not include any mention of Stuart in the will because the will is being executed after Al adopted him. Since Stuart is considered the same as Al's biological child after the adoption, he would have a claim to the estate as a pretermitted child only if the will was executed before the adoption. §206 of the Probate Code only requires express disinheritance of a child if the will fails to provide for children born or adopted after the will is made. Stuart, therefore, will have no such claim to Al's estate.